

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

RANDALL GUY SMITH,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 1:18-CV-669-WKW
)	[WO]
WALLY OLSON, <i>et al.</i> ,)	
)	
Defendants.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

Plaintiff filed this 42 U.S.C. § 1983 action on July 17, 2018. On July 19, 2018, the court entered an order of procedure directing Defendants to file an answer and special report. Doc. 4. The order also directed Plaintiff to “immediately inform the court and Defendants or Defendants’ counsel of record of any change in his address.” Doc. 4 at 3. The order further advised Plaintiff that “[f]ailure to provide a correct address to this court within ten (10) days following any change of address will result in the dismissal of this action.” Doc. 4 at 3.

On September 10, 2018, Plaintiff’s copy of an order entered August 31, 2018, was returned to the court marked as undeliverable because Plaintiff is no longer housed at the Dale County Jail. Accordingly, the court entered an order on September 12, 2018 requiring that by September 24, 2018 Plaintiff file with the court a notice of his current address or show cause why this case should not be dismissed for his failure to prosecute this action. Doc. 12. This order specifically advised Plaintiff that this case could not proceed if his whereabouts remained unknown and cautioned him that his failure to comply with its directives would result in the dismissal of this case. Doc. 12. Plaintiff’s copy of the September 12 order was returned to the court on September 20, 2018, marked as undeliverable.

The foregoing makes clear Plaintiff has failed to comply with the directives of the orders entered by this court and reflects a lack of interest in the continued prosecution of this case. This action cannot proceed properly in Plaintiff's absence. The court, therefore, concludes this case is due to be dismissed. *See Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989) (holding that, as a general rule, dismissal for failure to obey a court order is not an abuse of discretion where a litigant has been forewarned).

Accordingly, it is the RECOMMENDATION of the Magistrate Judge this case be DISMISSED without prejudice for Plaintiff's failure to comply with the orders of this court and to prosecute this action.

It is further ORDERED that **on or before November 16, 2018**, Plaintiff may file an objection to the Recommendation. Any objection filed must specifically identify the factual findings and legal conclusions in the Magistrate Judge's Recommendation to which Plaintiff party object. Frivolous, conclusive or general objections will not be considered by the District Court.

Failure to file a written objection to the proposed findings and recommendations in the Magistrate Judge's report shall bar a party from a *de novo* determination by the District Court of factual findings and legal issues covered in the report and shall "waive the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions" except upon grounds of plain error if necessary in the interests of justice. 11th Cir. R. 3-1; *see Resolution Trust Co. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989).

DONE on this 2nd day of November, 2018.



GRAY M. BORDEN
UNITED STATES MAGISTRATE JUDGE